

Benejan



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sysco Corporation

File: B-270581

Date: December 13, 1995

DECISION

Sysco Corporation protests the terms of request for proposals (RFP) No. 101-29-95, issued by the Department of Veterans Affairs (VA) for supply and distribution services for food and related items to various VA facilities throughout the United States.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of proposals.

The VA issued the RFP on April 5, 1995, and initial proposals were to be submitted by June 2. The VA evaluated initial proposals, and the contracting officer held written discussions with the offerors within the competitive range, including Sysco.

Section B-2 of the original RFP, entitled "PRICING STRUCTURE," contained specific instructions concerning prices and their effective dates. On November 5, the VA issued amendment No. 0005 to the RFP, adding the following to section B-2 of the RFP:

"Product prices shall be effective on the date of ordering, not the day of delivery. For example, an order placed on Friday, March 31, to be delivered on Monday, April 3, shall be priced in accordance with March prices."

Following discussions, by letter dated November 9, the contracting officer informed Sysco that its proposal would not be considered further. Specifically, that letter explained that based on the results of written and oral discussions with the firm, the agency concluded that Sysco would "be unable to guarantee that orders would be invoiced at the price effective on the date of order," as required by the RFP.

9581213

065373/155860

On November 20, Sysco filed the instant protest in our Office objecting to the language added by amendment No. 0005 quoted above. According to the protester, Sysco's method of invoicing on the date of delivery (rather than on date of order as required by the RFP) reflects the accepted standard practice in the food service distribution industry.¹ Sysco maintains that price verification upon order (as required by the RFP) would be "impossible" to achieve with its current system, and asserts that modifying its ordering and operating systems to accommodate the RFP's requirement would be unduly expensive and time consuming.²

Our Bid Protest Regulations specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to that closing time. Section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. As explained in greater detail below, we conclude that Sysco's protest is untimely.

As relevant here, paragraph C-2(e) of the RFP, as originally issued, contained the following requirement:

"Orders shall be placed by [VA] facilities no later than two (2) days prior to the delivery date and during normal working hours of the distributor. . . . Confirmations of the orders shall be received at the [VA] facility within two (2) hours of order placement, and shall include the same information required on the invoice, see [paragraph] C-3(iii) below. Confirmation reports may be submitted by electronic printout or facsimile."

¹The VA notified all other offerors under the RFP of Sysco's protest. See Federal Acquisition Regulation § 33.104(a)(2) (FAC 90-32). In response to that notification, more than 10 firms, all of which claim various levels of experience in the food service industry, have submitted their views in writing to our Office on Sysco's protest. None of the firms agrees with the protester on this matter, particularly with respect to the protester's characterization of its ordering system as the "accepted industry standard."

²Although Sysco also expresses its arguments in terms of a challenge to the contracting officer's decision to eliminate its proposal from further consideration, the gist of Sysco's objection is the language added by amendment No. 0005 to the RFP. In this regard, the protester essentially concedes that its current ordering and invoicing system does not comply with the RFP's requirements.

Paragraph C-3 of the RFP, entitled "ORDERING," requires the contractor to provide certain specific information such as current listing of products, specifications, and updated pricing information. Paragraph C-3(iii) requires that the contractor provide an "invoice of each shipment which, at a minimum, includes the following information: order number, date of delivery, quantity shipped, delivered price and total price by line item, and total price of the shipment." (Emphasis added.)

Reading the solicitation as a whole and in a manner that gives effect to the applicable provisions,³ we think that the original, unamended RFP clearly required the distributor (contractor) to confirm orders within two hours after the order is placed by the VA, and that the confirmation include the delivered price and total price by line item. The RFP is not ambiguous in this regard. Sysco's arguments notwithstanding, we cannot conclude that the language added by amendment No. 0005 incorporated a new requirement into the RFP such that "[n]o remotely comparable provision is found in the original RFP. . . ." Rather, the language added by that amendment merely restates a requirement of the original RFP and illustrates a specific example of its effect.

We conclude that the challenged requirement was apparent on the face of the initial, unamended solicitation. If Sysco objected to the RFP's price confirmation approach, the firm was required to raise those objections, at the latest, by the June 2 date for receipt of initial proposals. Since the protest was not filed until November 20, it is untimely and will not be considered.

The protest is dismissed.

Comptroller General
of the United States

³When a dispute exists as to the meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136.